

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

DAVES, et al., ) **Case No. 3:18-cv-00154-N**  
Plaintiffs, ) Dallas, Texas  
v. ) August 2, 2018  
DALLAS COUNTY, TEXAS, ) 1:00 p.m.  
et al., )  
Defendants. )  
TELEPHONE CONFERENCE

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DAVID L. HORAN,  
UNITED STATES MAGISTRATE JUDGE.

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1                   DALLAS, TEXAS - AUGUST 2, 2018 - 1:01 P.M.

2                   THE COURT: Good afternoon. This is Judge Horan.

3                   MR. HARLAN: Good afternoon, Judge.

4                   THE COURT: And I'll just say for the record, this --  
5 I'm sorry, just a minute. This is Case No. 3:18-cv-154-N.  
6 This is a telephone conference at the request of Plaintiffs'  
7 counsel. And I'll take appearances.

8                   MS. ROSSI: Good afternoon, Your Honor. This is  
9 Elizabeth Rossi for the Plaintiffs.

10                  THE COURT: Good afternoon.

11                  MR. HARLAN: Peter Harlan, Assistant District  
12 Attorney, on behalf of the Dallas County Defendants.

13                  THE COURT: Good afternoon.

14                  MR. MORGAN: Phil Morgan and Kate David from Husch  
15 Blackwell on behalf of the Dallas County Defendants, Your  
16 Honor.

17                  THE COURT: Good afternoon.

18                  MR. HUDSON: Eric Hudson, Kelsey Warren, Chris  
19 Lindsey, Dominique Stafford, on behalf of the Felony Judges.

20                  MR. HUDSON: Good afternoon, Your Honor.

21                  THE COURT: Anyone else? Okay. So, I've seen some  
22 e-mail correspondence, and I know defense counsel has spoken  
23 to both Ms. Todd and Ms. Repass in my chambers. I guess, just  
24 to recap, so where I understand things to be, last Friday we  
25 had the telephone oral argument hearing on the various

1 discovery motions, including Plaintiffs' motion for limited  
2 discovery. After hearing argument and after receiving  
3 briefing, I denied that, with the exception of permitting  
4 Plaintiffs to serve on one or more appropriate defendants a  
5 request for production for audio and video recordings from  
6 some three-day span between July 1 and July 8th, 2018 of bail  
7 hearings, and otherwise denied the leave for limited  
8 discovery.

9       There was -- also, and I indicated on the phone during  
10 that oral argument hearing and then memorialized in the  
11 electronic order just after that that the requests should call  
12 for the Defendants to produce those recordings by today,  
13 August 2nd. And I believe I said on the call that, if in the  
14 course of the Defendants seeking to pull that material  
15 together and get it produced, if there were issues with the  
16 production of that material, that it would make sense to reach  
17 out to my chambers and get on the phone and we can try and  
18 work though those issues, with any luck, without any motion  
19 practice as to that request for production.

20       It was also, as I understood it, everyone's expectation  
21 that this last Monday, that three days after the hearing, that  
22 the deadline was -- the deadline for Defendants to file their  
23 declarations, which would indicate -- the declarations that  
24 they were putting into the record pursuant to Judge Godbey's  
25 order, and that those declarants would be made available for

1 cross-examination, and that, at least with regard to the  
2 Dallas County Defendants, there had been an agreed -- you  
3 know, they had at that point agreed that if, after seeing  
4 those declarations, Plaintiffs' counsel believed there were  
5 additional adverse witnesses that they believed they needed to  
6 call by way -- or present by way of subpoenaed testimony at  
7 the hearing, that the Dallas County Defendants would not  
8 object to those subpoenas, provided that Judge Godbey had  
9 granted permission on a motion by Plaintiffs to modify his  
10 existing ordered plan for the hearing and to permit such  
11 adverse witness testimony in the course of the hearing to be  
12 held a week from tomorrow, August 10th.

13 And, you know, as I recall, the Felony Judge Defendants  
14 had not yet committed that they would not oppose subpoenas.  
15 But in any event, I do believe I made clear that I didn't find  
16 good cause for the requested depositions. In any event, that  
17 none of this changed that. And, of course, as I made clear, I  
18 have no idea whether Judge Godbey will or will not -- would or  
19 would not allow subpoenaed adverse witnesses' testimony beyond  
20 those who are the declarations based on the process and, you  
21 know, scope of evidence for the hearing that he laid out in  
22 his order granting the Plaintiffs' motion for a hearing.

23 So, as I understand it, that's where we're at. But I  
24 understand that Plaintiffs' counsel asked for this conference  
25 to raise some issues regarding additional discovery that you

1 believe you need based on the declarations that were filed on  
2 Monday?

3 MS. ROSSI: That's correct, Your Honor. I'd be happy  
4 to explain a little bit what our request is.

5 THE COURT: Okay. Please.

6 MS. ROSSI: So, -- I'm sorry?

7 THE COURT: Yeah. Go ahead, please.

8 MS. ROSSI: Thank you. And thank you for taking the  
9 time to have this. I know you have a very busy schedule. And  
10 we're hoping that this will be a very quick, simple hearing.

11 We now have seen the County's evidence. They presented  
12 three declarations on Monday, the upshot of which is an  
13 argument that appears to be that the system now is functioning  
14 quite differently than it did when we filed the lawsuit. And  
15 at last week's status conference, last week's discovery  
16 hearing, the Court emphasized that the Plaintiffs would need  
17 to show a present risk of irreparable harm. But it's very  
18 difficult to do that if we don't have the information we need  
19 to effectively cross-examine their witnesses on their  
20 recently-made claim that things are different -- for example,  
21 that they have voluntarily ceased this illegal conduct. It's  
22 most important that we be able to know when that happened and  
23 whether it's actually -- whether this is something that  
24 actually changed in the way that they claim that it has.

25 And the best evidence of that which we need to show

1 irreparable harm from which the Court will need to determine  
2 whether voluntary cessation might apply are the videos of the  
3 hearings that have occurred over the last several months and  
4 any policy documents that memorialize these so-called  
5 irrevocable permanent changes to the system.

6 And so, as the Defendants proffered last week, they did  
7 submit a declaration from their chief magistrate judge, and we  
8 will be able to cross-examine her about the system that  
9 existed when we filed and how it exists now, but they haven't  
10 provided us any information about when the system changed or  
11 what has changed about it. And moreover, they've blocked us  
12 throughout this case and prior to filing from observing the  
13 bail hearings. I think, as the Court knows, these bail  
14 hearings are conducted in the jail in a room that's closed to  
15 the public, and they've denied access to us and to the public  
16 for the duration of this lawsuit. And now they're also  
17 refusing to produce video recordings, to the extent they  
18 exist, of these hearings. And meanwhile, they're going to ask  
19 Judge Godbey to rule that they've irrevocably changed their  
20 practices, that the Plaintiffs cannot demonstrate irreparable  
21 harm and the need for an injunction.

22 And so what our request is is leave to sort of very  
23 limited discovery requests that we think is necessary to  
24 produce evidence that we think will be necessary for us to  
25 show irreparable harm and so the district judge can make a

1 decision about that legal issue.

2 THE COURT: Well, I'm confused. I ordered that there  
3 be three days' worth of video and audio recordings from just  
4 the last several weeks of the bail hearings.

5 MS. ROSSI: Yes, Your Honor. And we're looking  
6 forward to reviewing those. However, all those will show us  
7 is what is happening essentially now. That's not --

8 THE COURT: But that's what you --

9 MS. ROSSI: But what they're saying is that they have  
10 --

11 THE COURT: That's what you just told me you needed.

12 MS. ROSSI: I'm sorry.

13 THE COURT: I'm sorry, but that's what you just told  
14 me you need, and you -- but then you also told me the  
15 Defendants are refusing to produce video. I mean, are you  
16 saying you need video --

17 MS. ROSSI: I'm sorry.

18 THE COURT: -- from a period after July 8th for some  
19 reason?

20 MS. ROSSI: I'm sorry, Your Honor. I was -- I was  
21 unclear. What I'm saying is that the Defendants have said  
22 that our system works different now than it did in January.  
23 But we don't know when those changes were made. For example,  
24 we don't know if they were policy changes that were ordered  
25 last December or this January or two weeks ago.



1           We also don't know whether those policy changes -- you  
2           know, Judge McVea, who submitted a declaration, doesn't  
3           conduct the vast majority of these magistrature hearings. So  
4           although she can testify to what her understanding is of the  
5           policies, it's not clear that she assisted on or knows what's  
6           happening at each of them. And so the best evidence of that  
7           are these video recordings, and not just from a couple weeks  
8           ago, but from hearings that took place in April, May, and June  
9           as well, so that we can determine from those videos when the  
10          hearings changed, if they've changed, and how they've changed.

11          Again, they've refused to tell us when any changes were  
12          made or what exactly changed, and so it's impossible to  
13          address the voluntary cessation factors without knowing how  
14          long these changes have been in place and whether they've been  
15          consistently applied, whether they're written or oral  
16          policies. And those factual issues are going to be critical  
17          for Judge Godbey to make a determination of irreparable harm  
18          and voluntary cessation.

19                 THE COURT: Won't you have to ask at the hearing? I  
20          mean, I --

21                 MS. ROSSI: Yes, Your Honor, we'll have an oppor...  
22          I'm sorry.

23                 THE COURT: Well, let me back up. If Defendants are  
24          claiming that there's no need for an injunction because of  
25          voluntary cessation of the alleged illegal conduct that gave

1 rise to the lawsuit in the first place, whose burden is that?  
2 Wouldn't that be theirs?

3 MS. ROSSI: Yes. The burden to prove voluntary  
4 cessation is theirs. That's correct.

5 THE COURT: All right.

6 MS. ROSSI: But it's also --

7 THE COURT: Well, I mean, I just --

8 MS. ROSSI: But we can't -- we can't --

9 THE COURT: Go ahead. No, you --

10 MS. ROSSI: I just -- I just -- it's very difficult  
11 and virtually impossible to cross-examine their witness  
12 without these written policies and the videos, which are in  
13 their possession. The burden on them is extremely low so that  
14 they can -- for them to produce these to us. They represented  
15 last week that they have the videos. If the written policy  
16 documents exist, they would be very easy to produce it.

17 And so they're trying to meet their burden to demonstrate  
18 voluntary cessation, but also withholding the evidence that we  
19 need to test the veracity and credibility and the durability  
20 of these policy changes that they're claiming are in place.

21 THE COURT: Well, I mean, I'm just -- for the moment,  
22 I'm just focused on these videos. We can talk about the  
23 policy documents in a minute. But I guess I'm just -- you  
24 want leave to request certain days, like, several days' worth  
25 of videos from each of the months before you filed in the

1 hopes that -- I mean, that just seems a very inexact way of  
2 going about getting what perhaps is a pretty exact fact, which  
3 is, when did you -- when did any policy go into place? Is it  
4 written? And when did the hearings change accordingly? I  
5 mean, you all are just going to -- you want to just look at  
6 like five days' worth of videos in March and five days' worth  
7 of videos in April and see if you can figure out what changed?  
8 I mean, --

9 MS. ROSSI: Your Honor, we're looking for several  
10 days of videos from each of the months since we filed this  
11 lawsuit. You know, the -- part of the lawsuit is not -- or,  
12 this lawsuit is not exclusively about the written policies  
13 that exist but it's about the customs and the practices and  
14 how those policies are applied. And so the testimony from  
15 Judge McVea about her understanding of the policies is  
16 interesting and relevant and important, as are the written  
17 policy documents that we're requesting now, but the best  
18 evidence of what the policies -- of how the policies got  
19 implemented and whether these written documents and whether  
20 Judge McVea's testimony is accurate is the videos of what's  
21 actually happening at these hearings when arrestees appear  
22 before a magistrate.

23 THE COURT: I -- you know, I mean, I have looked at  
24 your briefing on these mootness and standing issues. I mean,  
25 that -- as I understood the -- these discovery -- I mean, most

1 of the mostly discovery requests that I've previously ruled on  
2 that was -- our hearing, I was focused mainly on the  
3 preliminary injunction. I see how the two are intertwined.  
4 But help me understand why this temporal element is so  
5 important. I mean, why is it -- why does it matter whether --

6 MS. ROSSI: Oh, I --

7 THE COURT: -- whether it happened in March or  
8 February or June?

9 MS. ROSSI: Sure. Thanks. Thanks, Your Honor. I  
10 think the reason -- I think it matters for a couple reasons.  
11 One, if the changes happened, you know, last week, it's much  
12 less -- it suggests that the changes happened in response to  
13 litigation, because a preliminary injunction hearing was  
14 coming up and that because their declarations were due. If it  
15 happened, you know, at the beginning of January in response to  
16 reform efforts that were happening on the ground anyway in  
17 Dallas, the analysis may be different about irreparable harm  
18 and voluntary cessation. If the policies are written as  
19 opposed to oral, it suggests a different level of permanence.  
20 These are all things that we just simply need an opportunity  
21 to present to Judge Godbey so that he can make a factual  
22 determination about the validity of their claim that their  
23 policies have changed and are constitutional.

24 And most importantly, and this is what the videos will  
25 show us, we anticipate, is whether whatever those policy

1 changes are are being consistently applied, which is one of  
2 the most important factors under the voluntary cessation  
3 precedent. So the timing is really critical so that the  
4 district judge can make a determination about whether these  
5 changes are permanent, whether they're firm, and whether the  
6 Plaintiff class is likely to suffer irreparable harm because  
7 the Defendants, absent an injunction, are substantially likely  
8 to return to their prior illegal conduct.

9 THE COURT: All right. Well, Mr. Harlan, let me hear  
10 from you.

11 MR. HARLAN: Well, Your Honor, I think that it would  
12 be more appropriate for Mr. Morgan to address these issues  
13 than it would be for me, so I'll defer to him.

14 THE COURT: Okay. That's fine. I was just taking a  
15 shot in the dark, I guess.

16 MR. MORGAN: Your Honor, Phil Morgan for Dallas  
17 County Defendants.

18 Where, you know, where we are -- were last week, what is  
19 going on in July in the videos -- first, let me be clear. We  
20 are producing the videos the Court ordered today, just so the  
21 record is clear on that.

22 THE COURT: Okay.

23 MR. MORGAN: The Plaintiffs will have three days of  
24 videos to review. They will see what the current processes  
25 are in Dallas County.

1           What happened in June, what happened in May, what happened  
2           in April, has no bearing on what the practices are today that  
3           they're seeking to enjoin. So asking for additional days  
4           looking backwards is simply harassing.

5           And frankly, Your Honor, you hit the nail on the head: If  
6           they were really concerned about what was going on, you know,  
7           today, they'd be -- they'd say, hey, we need additional videos  
8           from more recent. But looking backwards, backwards-looking  
9           videos have no bearing on the issue today. The declarations  
10          are clear. The Declarants will be there for cross-  
11          examination.

12          I mean, you heard Ms. Rossi. She's saying, well, the best  
13          evidence. Well, the best evidence is the videos is about how  
14          representative practices, and then we'll have people there on  
15          which to testify about the videos. I mean, Plaintiffs have  
16          everything that they need to go to the August 10th hearing,  
17          and requiring additional video production one week before the  
18          hearing serves no purpose, and frankly, is burdensome.

19          As to the written policies, practices, and instructions,  
20          which is another request for production, I'd like to make two  
21          points. One, Plaintiffs' own complaint filed in late January  
22          2018 talks about changes in policies and practices. In  
23          Paragraph 19 of their complaint, they say, Upon information  
24          and belief, the Misdemeanor Judges recently authorized but did  
25          not require Magistrates to grant release on unsecured bonds.

1 Plaintiffs knew that the policies, practices, and procedures  
2 were changing. If they needed those written policies,  
3 practices, and procedure, it's back to what we were arguing  
4 about last week: They should have sought that discovery  
5 months ago, not one week before the hearing.

6 On top of that, when we did get the requests for  
7 production, we sent it to our clients, and our clients have  
8 responded. If they have to respond to that request for  
9 production on an expedited timeline, they can't do their job.  
10 It would be burdensome and impossible to comply with. So,  
11 when Plaintiffs say, oh, Your Honor, it's so easy, just hand  
12 them some documents and e-mails, that's not at all accurate or  
13 true. And our clients have confirmed that our clients cannot  
14 produce that.

15 And we haven't even talked about the other items that they  
16 requested, but I'll go ahead and do it now. The jail  
17 population report and the audit report, nothing in our  
18 declaration speaks to those. So we're not here today where  
19 Plaintiff says, you know, Judge McVea tossed out some  
20 documents and we would like to have the underlying documents  
21 that Judge McVea talked about. That's not what we're here  
22 today. This is -- this is Plaintiffs, one week now before the  
23 hearing, seeking discovery that they should have sought and  
24 that they knew existed months ago. And to ask for expedited  
25 discovery at this point, they have not shown -- frankly, they

1 have not shown good cause. We find it harassing. We should  
2 go to the hearing on the 10th with the evidence that we have  
3 and they'll have Dallas County Defendants that are cross-  
4 examined and we can go forward.

5 THE COURT: Well, I mean, Mr. Morgan, let me ask you  
6 about the written -- any written policies. I mean, as against  
7 like videos, where you can -- well, anyways, as against what  
8 you've already said about the videos, if there are some  
9 documents -- well, I guess I don't know. I mean, I can't -- I  
10 can't pretend to have any personal experience -- it'd be weird  
11 if I did, I guess, if I was sitting in this position doing  
12 these discovery issues in this federal case -- but I don't  
13 know the way that internal court business is conducted, you  
14 know, at the -- in Dallas County or within -- among the  
15 magistrates there or as between them and the court  
16 administrators. But, I mean, are you saying that any  
17 documents reflecting some -- any kind of policy change or  
18 procedure or protocol change that was conveyed to all the  
19 magistrates are voluminous documents? I mean, is it --

20 MR. MORGAN: Well, Your --

21 THE COURT: Is it just --

22 MR. MORGAN: Well, Your Honor, I mean --

23 THE COURT: I mean, maybe it is, but, you know, I  
24 guess I have -- of everything that Plaintiffs are right now  
25 asking for, you know, having actual -- that actual -- because



1 that's -- I mean, put it this way. I mean, if Ms. Rossi gets  
2 up and goes to cross-examine one of your declarants and they  
3 say, well, you know, it was pursuant to that policy. Well,  
4 you know, what is it? Well, it's sort of a written policy.  
5 When was it dated? I don't have it in front of me, I don't  
6 know. I mean, it -- that may all end up being a bit  
7 unsatisfying, including for Judge Godbey as a fact-finder. So  
8 I guess I'm just curious if there aren't some core documents  
9 with regard -- that reflect any -- or reflect or -- reflect or  
10 perhaps, you know, made to happen any sort of policy changes  
11 that we're talking about here that couldn't be produced  
12 without undue burden.

13 MR. MORGAN: Sure. Let me address that. Your Honor,  
14 we just got the requests for production yesterday. We sent it  
15 to Judge McVea. And her initial response was, no, it would be  
16 unduly burdensome to do this. Because Plaintiffs' request  
17 asks for written guidance, policies, instructions, directives,  
18 advisories. I mean, any e-mails sent. They -- I mean, they  
19 didn't draft a narrow request. They're seeking it back to  
20 July 1, 2017. And so, in speaking with our client, yes, it  
21 would be burdensome to respond to that request on this short  
22 timeline.

23 On top of that, it doesn't -- it begs the question of they  
24 talk about these advisory guidelines, directives, in their  
25 complaint filed in January. They knew that there were

1 directives and guidelines and policies out there. They knew  
2 that there had been a change in policy.

3 THE COURT: Yeah, but they've pled it on information  
4 -- Mr. Morgan, they've pled it on information and belief. I  
5 mean, that suggests they didn't actually have the documents in  
6 front of them and that they were pleading at the lowest  
7 possible level that they can to survive Rule 11 based on  
8 information that they had available to them in order to bring  
9 their claims and then, you know, seek to substantiate it in  
10 discovery.

11 And I hear you that --

12 MR. MORGAN: That's correct.

13 THE COURT: I mean, just understand my point. I  
14 understand that this is very late in the day and I don't think  
15 you should expect that there's going to be some, you know,  
16 giant discovery process going on over the course of the next  
17 six days. I'm just asking if some much more narrow, you know,  
18 narrow discovery of, you know, whatever key documents there  
19 are with regard to whatever policies have -- are in place to  
20 get the hearings to how they are now, like, you know, as --  
21 not how they were two years ago or a year -- well, a year ago.  
22 But, you know, what -- are there a few key documents that are  
23 what the folks within the system are actually relying on to be  
24 doing the hearings the way they are now and that is what gives  
25 rise to your clients' position that there's been a cessation

1 of any allegedly unconstitutional or illegal practices such  
2 that there doesn't need to be an injunction and there may be  
3 mootness?

4 MR. MORGAN: Your Honor, we -- to address your  
5 question directly, I don't know the answer to that. We didn't  
6 specifically talk with our client on that. We said, we've  
7 gotten this discovery request; what do we have? The response  
8 was, we have tons of stuff, I spent two hours, I -- there's no  
9 way I'm going to be able to get through all this in a  
10 reasonable fashion.

11 If Plaintiffs wanted to serve, you know, if they narrowed  
12 the request, we can go back and see. But what I'm afraid of  
13 is what we're going to end up in a position where, one week  
14 before the hearing, we've tried to comply. It sounds like  
15 Your Honor is saying you should -- you know, there's got to be  
16 something, give them something. And if we have an order like  
17 that and we're on the stand and Judge, you know, Judge McVea  
18 or Judge Kennedy, who are two declarants, talk about a  
19 different e-mail or something else, then it's going to be,  
20 well, they didn't produce it, they didn't produce it, they  
21 didn't produce it.

22 And I still go back to, you know, Plaintiffs -- you  
23 mentioned it was upon information and belief. Then why, if  
24 they filed suit on January 21st, why on January 22nd didn't we  
25 receive requests for expedited discovery and, you know,

1 discovery then? Why are we not getting a request for  
2 production for documents they knew probably existed until one  
3 week before the hearing?

4 And so, I mean, the --

5 MS. ROSSI: Your Honor?

6 MR. MORGAN: They -- Your Honor, let me finish, and  
7 then I'll --

8 THE COURT: Sure.

9 MR. MORGAN: The question is, they still need to  
10 prove good cause, and their delay in taking discovery is --  
11 they can't meet that burden. They're not entitled to  
12 (inaudible) discovery. Period.

13 MS. ROSSI: Your Honor, if I can have a minute to  
14 respond to some of that. It's --

15 THE COURT: Sure.

16 MS. ROSSI: Thank you. So, Defendants did not  
17 indicate at any point in any of their filings in response to  
18 our preliminary injunction motion that they were contesting  
19 any of the facts that we had alleged about how the system  
20 works. In the filings, I believe it was the County's response  
21 to our preliminary injunction motion, they even said -- they  
22 conceded that the magistrates virtually always set bail  
23 according to the bail schedule and simply said that there was  
24 nothing unconstitutional about that.

25 It was only this past Monday, Monday evening, three days,

1 two and a half days ago, when we received their declarations  
2 that we learned at all about any of these changes to the  
3 system.

4 We've been working very diligently since this case was  
5 filed to confer with Defendants about the facts that are in  
6 dispute at the preliminary injunction hearing and to obtain  
7 the evidence that we need to give Judge Godbey the evidence  
8 that he needs to make the factual findings necessary to rule  
9 on our motion. We've already told Defendants that we will  
10 narrow our requests to any directives that have been given to  
11 the magistrates relating to policy changes.

12 I'll also note that in Paragraph 6 of Judge McVea's  
13 declaration, it refers -- she states that the financial  
14 affidavit was added to the post-arrest process, quote, early  
15 this year and is a permanent change in the policy and  
16 practice. So that's one example of the type of document  
17 that's being referenced or policies being referenced. So  
18 Plaintiffs are clearly entitled to some documentary support.

19 And I don't think -- I think Your Honor was exactly  
20 correct. If they have policy changes that are being  
21 implemented, have been implemented, quote, early this year,  
22 whatever that means, then for us to effectively cross-examine  
23 Judge McVea and the other declarants on what those changes are  
24 and how they operate, we're -- we need the evidence and the  
25 documents and the videos that will allow us to ask those

1 questions and determine what is actually happening on the  
2 ground.

3 You know, just as one example, if Judge McVea were to  
4 testify that certain changes went into effect in March, and  
5 then, watching the hearings, we see that those same things are  
6 happening in April and in May, it's really important  
7 information for us to be able to show to Judge Godbey.

8 And Mr. Morgan is simply wrong that the videos from April,  
9 May, and June are irrelevant. Under irreparable harm  
10 precedent, it matters whether the changes are recent and  
11 whether the people who are actually working in the system, so  
12 actually the magistrates at the hearings and the bailiffs who  
13 are at the hearings, are following whatever these new policies  
14 are that we haven't seen any documentary evidence of.

15 Again, I just would reiterate, the Defendants are trying  
16 to say that a preliminary injunction is not necessary because  
17 Plaintiffs can't demonstrate irreparable harm because they  
18 have proven that there's been permanent changes to the system  
19 that resolve all of Plaintiffs' claims, yet they're attempting  
20 to preclude us from accessing the evidence necessary to  
21 determine the validity and the truth of that argument.

22 THE COURT: All right. Well, under all the  
23 circumstances, I don't find good cause for you to get  
24 additional videos. I mean, I think you can cross-examine on  
25 that.

1       You haven't even -- you didn't bring it up, but I also, to  
2       the extent that you all have been talking about jail and  
3       population audit reports, I don't find good cause at this  
4       stage for you to have discovery between now and the hearing  
5       just over seven days from now for that.

6       With regard to any written documents behind any policy  
7       changes, which I think would also reflect the effective date  
8       of those policy changes, I -- from the -- again, just doing  
9       this on the phone, obviously, I don't know what exactly your  
10      requests for production that you sent over for discussion  
11      purposes with -- to Defendants' counsel look like, but Mr.  
12      Morgan has conveyed some of it. I think that would be too  
13      broad and I don't find good cause for that.

14      I think it would make sense for you all to confer and Mr.  
15      Morgan to -- and talk about the narrowest possible things that  
16      you may need with regard to documents that are the actual  
17      implementing documents for changes that got the system to  
18      where it is right now, as will be reflected in the hearings  
19      from this month that you will be getting today.

20      And, you know, I mean, and so, you know, if Judge McVea,  
21      having gotten a request that says, you know, all  
22      communications regarding or all documents reflecting and all  
23      e-mails discussing, that is a lot of work, potentially,  
24      depending on how much internal discussion there was. But what  
25      I do think there may be good cause for, depending on how you

1 all can narrow it and what you can then tell me about what,  
2 you know, Mr. Morgan is able to find out from his client,  
3 about, you know, actual implementing -- you know, the actual  
4 -- any official implementing documents or -- not  
5 communications about them, not drafts, not the other documents  
6 that reflect, but actual documents that, you know, are --  
7 that, you know, are sort of operational in some sense within  
8 the County's system. You know, that may not be unduly  
9 burdensome and that may actually be important for the hearing.

10 So, for now, I'm denying the Plaintiffs' request. I'm  
11 denying it entirely with regard to the videos and the two  
12 audits, but I'll ask that you all confer this afternoon. And  
13 Mr. Morgan, perhaps if you can visit with your clients and we  
14 can reconvene at the same time tomorrow and you all can give  
15 me the report on what, you know, what you've been able to work  
16 out with regard to that and what Mr. Morgan has been able to  
17 find out from his client.

18 Again, I don't envision -- I'm -- I don't know how many  
19 ways I can make this clearer, but I'm not envisioning -- I  
20 don't -- I wouldn't expect it's a lot of documents and I am  
21 expecting a request or even sort of an agreed scope of limited  
22 document production here that would be quite limited, but, you  
23 know, might -- if they indeed exist, if that is indeed what is  
24 out there, that, you know, could be important enough that  
25 there could be good cause for it.



1           So, I'll order you all to do that. We'll reconvene for  
2 another telephonic conference on this at 1:00 o'clock tomorrow  
3 and we'll go from there.

4           MS. ROSSI: Your Honor, may I -- one final  
5 clarification point, --

6           THE COURT: Sure.

7           MS. ROSSI: -- just to make sure I understand what  
8 you're ruling on?

9           I understand you found no good cause for the videos or for  
10 the audit. Our other request was for jail population  
11 committee reports from May, June, and July. Those are  
12 documents that are typically publicly available and uploaded  
13 monthly, is my understanding, uploaded monthly to a publicly-  
14 accessible Dallas County website. The most recent report was  
15 uploaded in May and includes numbers from April 2018. Our  
16 request is simply that if those reports exist and have simply  
17 -- they've already been generated and just are not uploaded to  
18 the external public website, that they be produced to us.  
19 We're not asking that they produce anything, but that if these  
20 report PDFs are in existence, that they be sent to us. They  
21 have important information --

22           MR. MORGAN: Your Honor?

23           MS. ROSSI: -- about, for example, the number of  
24 people who are detained pretrial by both misdemeanors and  
25 felonies, the number of people released on various types of

1 bonds, and how long people who are released on those different  
2 types of bonds must wait in jail prior to being released. And  
3 so they are also very important to the question of the  
4 duration of time that impoverished people are detained prior  
5 to release.

6 And, again, we're not asking them to generate anything,  
7 just to convey to us documents if they already exist.

8 THE COURT: Mr. Morgan, if you'll --

9 MR. MORGAN: Your Honor, the --

10 THE COURT: Sorry.

11 MR. MORGAN: Sorry. I don't -- we will -- we will  
12 ask. I think that's reasonable. But if the reports are not  
13 finalized, if they're in draft form, I don't think they should  
14 be produced. In my experience, at least with other counties,  
15 is a lot of times those reports, once they're finalized,  
16 they're publicly available (obscured) for several months. But  
17 to the narrowed request, if there are final reports  
18 publishable -- publishable-ready reports for those months, we  
19 can -- we will produce those. But if they are in draft form,  
20 we're not required to.

21 THE COURT: Yes. I agree. I think that's consistent  
22 with what Ms. Rossi was saying anyways. I mean, essentially,  
23 she's saying if they're just -- if they're ready to be  
24 uploaded, if they're ready to be publically available, they  
25 just haven't been made publicly available, they would ask that

1 they be turned over, and I agree that that's -- and I agree  
2 with you that I think that's reasonable. So that, that, I  
3 will -- I will sort of find good cause for that request, with  
4 that understanding.

5 MR. MORGAN: Okay.

6 MS. ROSSI: Thank you, Your Honor.

7 THE COURT: All right. Thank you. Okay. Well,  
8 anything else we ought to talk about today?

9 MS. ROSSI: No, Your Honor, not for the Plaintiffs.

10 THE COURT: All right.

11 MR. MORGAN: Nothing for the Defendants, the County  
12 Defendants, Your Honor.

13 THE COURT: For the Felony Judge Defendants?

14 MR. HUDSON: Nothing for the Felony Judges, Your  
15 Honor.

16 THE COURT: All right. Thank you. I will look  
17 forward to talking to you again in about 24 hours and find out  
18 where we're at at that point with regard to this one possible  
19 document request that we've been talking about. But have a  
20 good day.

21 MS. ROSSI: And now --

22 MR. MORGAN: Thank you.

23 THE COURT: Sorry. Ms. Rossi?

24 MS. ROSSI: Will you be issuing an order? Your  
25 Honor, will you be issuing an order?

1           THE COURT: I will issue an order -- honestly, I  
2 don't know how I would write up what I just said about you all  
3 working that out. I mean, do you all need -- if you want, I  
4 mean, now is the time if you have more clarification. I mean,  
5 I will -- I mean, I could issue an order on the jail  
6 population reports and denying your request for additional  
7 videos and -- and -- and I'm sorry, what was --

8           MR. MORGAN: The audit.

9           THE COURT: The audit report, yes. But what I am  
10 ordering you all to do is to confer to try and come up with an  
11 narrowed, very narrow request for production with regard to,  
12 you know, actual operational documents for the policies as  
13 they currently exist and would, you know, and as,  
14 parenthetically, as would be reflected in the videos of the  
15 bail hearings from this -- from the month immediately prior,  
16 July 2018, should be reflected in that, according to the  
17 Defendants. That -- and ordering that, you know, after you  
18 all have been able to talk about that and Mr. Morgan  
19 coordinated with his client between now and our 1:00 p.m.  
20 conference tomorrow about, you know, whether -- what would be  
21 involved, you know, I mean, are there -- what's the scope of  
22 any such documents and what would be involved in pulling them  
23 together? And again, I don't know, but as against a much  
24 broader request, I'm expecting that that would be less likely  
25 to impose a real undue burden.

1           So, and can we use this same call-in tomorrow?

2           MS. ROSSI: Yes.

3           THE COURT: Okay. All right. So, everyone just plan  
4 on the same call-in tomorrow.

5           So I will -- Ms. Rossi, I will, I will issue a short  
6 order, but I'm, frankly, I'm just going to very, very  
7 shorthand the thing that I'm sending you all off to do, having  
8 now tried to convey it twice, so --

9           MS. ROSSI: Thank you.

10          THE COURT: All right.

11          MS. DAVID: Thank you, Your Honor.

12          THE COURT: Okay. All right. Then we'll be  
13 adjourned for today. Thank you.

14          MR. MORGAN: Thank you.

15          (Proceedings concluded at 1:40 p.m.)

16                               --oOo--

17

18

19                               CERTIFICATE

20           I certify that the foregoing is a correct transcript to  
21 the best of my ability from the electronic sound recording of  
the proceedings in the above-entitled matter.

22           **/s/ Kathy Rehling**

**12/26/2019**

23

24           \_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

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Date

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INDEX

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PROCEEDINGS

3

WITNESSES

-none-

EXHIBITS

-none-

RULINGS

22/26/28

END OF PROCEEDINGS

29

INDEX

30